

January 10, 2007

Commissioner John Crowley  
BISHCA  
89 Main St., Drawer 20  
Montpelier, VT 05620-3601

Ref: Docket #06-013-H  
Vermont State Hospital Conceptual CON

The Public Oversight Commission reviewed on December 13, 2006 the application by the Vermont Department of Health for a conceptual Certificate of Need to complete planning "to create new inpatient programs to enhance psychiatric inpatient care and replace the functions currently performed by Vermont State Hospital." The estimated cost of planning requested in the conceptual CON ranges between \$2,405,000 and \$4,355,000. The POC recommends approval of the Department's CON application subject to conditions described herein.

Findings and Observations:

1. The comprehensive plan for treatment of patients with mental disorders as described in the Vermont Futures Plan focuses treatment towards community based settings with the objective of minimizing coercion or restrictions on patients while providing a safe and therapeutic environment. The inpatient program as described in the CON application represents one part of this overall integrated treatment proposal and provides treatment for the most acutely ill patients. The scale, operational expense, and capital needed for the acute care facility is appropriate only to the extent the overall plan can be implemented. An acute care solution which detracts from necessary funding of the community care components undermines the overall objectives of the Futures Plan.
2. The Applicant stated the planning requested in the CON would address a range of alternative solutions, but the overall impression from the presentation and application was that there is a preferred option to construct a new inpatient facility physically connected to and an integral part of the main campus of Fletcher Allen Health Care in Burlington.
3. The purpose of the final CON is to provide detailed planning and cost estimates for the project. However, the POC's prior involvement with construction projects at the FAHC campus and the very preliminary discussion of costs by the Applicant during the conceptual CON phase suggest a capital expenditure approaching \$100,000,000. This amount seems beyond the fiscal capability of the State of Vermont if

the overall components of the Futures Project were to be implemented and adequately funded.

4. The Applicant focused on Medicaid financial reimbursement concerns if the inpatient facility were to be classified as an Institute for Mental Disease (IMD) and therefore be ineligible for federal reimbursement. This potential loss in matching funds was estimated at near \$10,000,000 per year. The certainty of this risk was not clear. Questions were raised by some parties to the application suggesting that other states have found ways to classify facilities not physically connected to a hospital as being eligible for Medicaid reimbursement.
5. The Applicant and Dr. Robert Pierattini, Chairman of Psychiatry at UVM College of Medicine, stated the benefits of co-location of this inpatient psychiatric facility at a tertiary medical center. Some of the benefits related specifically to patient care and the changing treatment protocols of psychiatry where access to advanced technology was integral to diagnosis and treatment. Other benefits related to co-location at FAHC were an improved status and perception of psychiatric medicine by other health care practitioners and, possibly, the public. There was not a cost/benefit analysis of the value of these benefits justifying the potentially high cost of the applicant's preferred alternative. Somewhat contradictory testimony came from the psychologist of the current Vermont State Hospital in Waterbury who asserted that technology is currently appropriately used in diagnosis and treatment even though the Waterbury facility is "stand alone" and that the medical imaging currently used is predominantly accessed through Central Vermont Hospital, not the FAHC tertiary care facility.
6. It was very unclear whether the application appropriately addresses the mental health treatment needs of incarcerated individuals under control of the Department of Corrections. Estimates of the number of inmates in need of acute psychiatric care and hospitalization varied widely among parties and witnesses at the CON hearing. The Applicant's estimates of the number of inpatient beds needed for inmates are strongly at odds with the unmet need described by witnesses for interested parties.
7. For whatever set of reasons, the application makes little or no reference to the mental health plans of other states and the solutions they have implemented. The POC has a strong interest in not "reinventing the wheel" and believes we should thoroughly understand the solutions and costs in other states.
8. Quantified treatment outcomes data and benchmarks justifying the project were not sufficient to prove the proposed solution was the best alternative.
9. The need for inpatient beds was described as being variable based on the scale, funding, and success of the distributed community based programs which are the basis of the Futures Plan. Other uncertainties include the future direction of psychiatry practice as described by Dr.

Pierattini. Given these uncertainties, and the long time period for which the facilities are being built (fifty years was the quote from Ken Liberto, Exec. Director of the Vermont Association for Mental Health), the plan should include some provision for flexibility of facilities to allow scaling the number of beds to meet need and changing medical practice without creating undue capital requirements or increased operating expense. The appropriate alternative should have this capability while the preferred FAHC alternative presented by the Applicant was notable in having very little flexibility within its constrained architectural concept.

10. The interested parties requested a myriad of studies and analyses on issues such as storm water runoff, green space, traffic, and impact on governmental services. The CON produced must be comprehensive in addressing all issues applicable to the site(s) proposed.
11. The Vermont State Employees Association makes a credible argument that the current personnel at the Waterbury facility have the specialized training and experience to provide good quality care. It is unclear how such a skilled human resource would be successfully transitioned to an inpatient facility in another location.
12. The long term financial sustainability of both the inpatient facility and the community based system is uncertain. Speaking for the Applicant, Beth Tanzman stated that inpatients are the responsibility of the state and they must be appropriately cared for. However, the current status of decertification of the Vermont State Hospital by federal agencies suggests that responsibility has not been consistently fulfilled. The Legislature's and Administrations' commitment to financial support of the mental health system both today and tomorrow cannot be guaranteed. Building a system which balances quality care with long term affordability will be critical to obtaining that financial commitment.
13. Perhaps the most notable finding or observation by the POC is that Fletcher Allen Health Care is not a party to this application although the preferred, and only detailed, alternative is at FAHC's Burlington campus. FAHC management may have had extensive involvement in the conceptual CON planning, but there is no information offered regarding how an inpatient CON at FAHC would be managed. Key questions involve management accountability and responsibility, not only to the patients, but also to the host community and all the other stakeholders in this venture. This question must be resolved.

Based on the information and testimony provided by the Applicant and the interested parties, and with consideration of the above findings, the Public Oversight Commission recommends to the Commissioner of BISHCA that the conceptual CON for this Docket be approved with the following conditions:

1. The CON must explore and consider those alternative solutions for an inpatient psychiatric facility which provide a satisfactory and

- appropriate balance of the priorities of the Health Resource Allocation Plan and achieves the least capital and operating costs.
2. The CON must review the need and include in the CON proposal appropriate consideration for adequate inpatient mental health treatment for inmates of the state correctional system. Issues associated with commingling of inmates and other patients must be appropriately addressed.
  3. The CON must provide a long range perspective to include adequate funding sources for the inpatient facility and the community mental health systems. The long term perspective should also include flexibility in plans and facilities to make efficient adaptations to changing clinical and inpatient population requirements.
  4. The CON must include sufficient research and analysis of systems in place or planned in other states to permit assessment of the effectiveness and efficiency of the CON's preferred alternative.
  5. Governance of the inpatient facilities must be defined and the relevant parties must be in specified agreement on issues of operation, finances, accountability and management responsibilities.
  6. The CON must provide a transition plan from the current to the planned facilities which addresses preserving to the extent reasonable the skills and capabilities already developed within the state's mental health system, including due consideration of retention of the current VSH workforce to address issues of continuance of care and quality of care.
  7. The CON must address or show alternate plans to address the issues of community impact raised by the various parties to the application.
  8. The Applicant should comply with a CON schedule established by BISHCA with agreed upon timetables and planning benchmarks. The POC recommends the CON planning process be shortened to less than the two years proposed by the Applicant. The severity of the need argues for a more expedited plan and solution. Inclusion of an interim objective for recertification of the current VSH could be part of this plan in order to address quality of care issues for the extended period before completion of a new Vermont State Hospital. Progress against the agreed upon planning schedule should be reported to the POC.
  9. Interested parties should be permitted open, transparent and meaningful access to the CON planning process to include their perspectives on the needs of their members, constituents, or those who utilize mental health services.

Respectfully submitted,

John O'Kane  
Chair, Public Oversight Commission